



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

999 18th STREET - SUITE 300
DENVER, COLORADO 80202-2466
<http://www.epa.gov/region08>

DEC 5 2005

Ref: 8ENF-T

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Henry Nemec, President and Trustee
Coffee Creek Water Company
401 4th Avenue
Coffee Creek, MT 59424

Lon Nemec, Trustee
Coffee Creek Water Company
Box 6160 MT Highway 81
Coffee Creek, MT 59424

Charlie Hartman, Trustee
Coffee Creek Water Company
Box 4984 MT Highway 81
Coffee Creek, MT 59424

Re: Administrative Order
Coffee Creek Water Company

Dear Messrs. Nemec and Hartman:

This letter concerns our mutual efforts to bring the Coffee Creek Water Company (the Company) into compliance with the Safe Drinking Water Act (SDWA), particularly with the Maximum Contaminant Levels (MCLs) for nitrate and total nitrate and nitrite established by the National Primary Drinking Water Regulations, 40 C.F.R. part 141.

As you are aware, in September of this year, EPA Region 8 proposed that the Company enter into an Administrative Order on Consent, under which the Company would have taken steps with assistance from the United States Environmental Protection Agency (EPA) and the State of Montana Department of Environmental Quality (MDEQ), to bring the Company's public water supply system (the System) into compliance. The Company declined to sign the Administrative Order on Consent, although it notified EPA that it was interested in resolving this issue.



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In order to continue the process of bringing the System into compliance, EPA Region 8 is issuing the enclosed Administrative Order, which contains requirements similar to those in the previously proposed Administrative Order on Consent. EPA has the authority to issue orders of this sort according to section 1414 of the SDWA, 42 U.S.C. § 300g-3.

Under the enclosed Order, the Company would investigate options for bringing the System into compliance and implement the option it selects, with an ultimate compliance date of December 30, 2007 for meeting the nitrate and total nitrate and nitrite MCLs.

One option is to form a water district to run the System, which would help qualify the System for loans or grants. The Order would allow you to form another kind of entity if that other entity would also be eligible for loans and/or grants and would be allowed to own a public water system under Montana law.

Alternatively, the Order would allow for coming into compliance by, for example, buying water from another public water system, or mixing water from the System with water purchased from another public water system. For example, you may wish to consider buying water from another community and transporting it to Coffee Creek by truck. Dilution of Coffee Creek water with water from a nitrate-free source may be an economical solution. The Order requires you to notify EPA within 90 days if you wish to pursue one of these options. If EPA approves the alternative water source, and if you can afford to buy this water without applying for grants or loans, it is possible that you could avoid having to form a district.

If you chose to form a district, we would recommend that you consult with a qualified attorney and/or water system technical assistance provider to assist you in the process. Some organizations that provide that kind of assistance, without charge, include the Montana Rural Water Systems (406-454-1151) and the Midwest Assistance Program (952-758-4334; local contact Pam Higgins at 406-538-5173).

For funding improvements to your system, there are several potential sources. Eric Finke of EPA's Montana office has contacted various entities and obtained this information concerning their deadlines for applications:

- The Montana Department of Natural Resources and Conservation offers grants of up to \$10,000 for planning (preparation of a Preliminary Engineering Report). The deadline for these grants is May 15 of each year.
- The Montana Board of Investments offers what is called an INTERCAP loan. There is no deadline for an application for this loan.
- Montana Department of Environmental Quality Drinking Water State Revolving Fund (DWSRF) loans have no deadline.

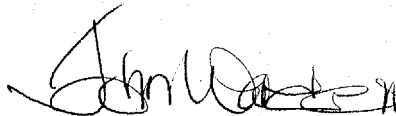


Also enclosed is a Small Business Regulatory Enforcement and Fairness Act (SBREFA) Section 22 information sheet. The SBREFA sheet notifies small businesses of their right to comment on regulatory enforcement activities, and provides information on compliance assistance. Dissemination of this information sheet does not constitute an admission or a determination by EPA that the Company is a small entity as defined by SBREFA.

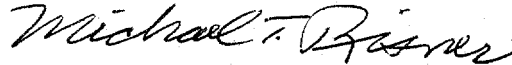
If you wish to discuss this Order further, please contact Eric Finke of EPA's Helena, Montana office at (406) 457-5026, or toll-free at 1-866-457-2690, ext. 5026. If you are represented by an attorney, please feel free to ask your attorney to call Peggy Livingston at (303) 312-6858.

Thank you for your cooperation. We look forward to hearing from you soon.

Sincerely,



John Wardell, Director
Montana Office



Michael T. Risner, Director
David J. Janik, Supervisory Attorney
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

Enclosure

Order

cc: John Arrigo, Montana DEQ
Frank H. Gessaman, Montana DEQ
Keith Christie, Montana DEQ



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- The United States Department of Agriculture Rural Development/Rural Utilities Service offers both grants and loans. There is no application deadline.
- The Montana Department of Natural Resources and Conservation (DNRC) offers Renewable Resource grants and loans. The deadline for the next two years of funding for capital projects has already passed. The application deadline is based on the biennial legislative cycle. The next deadline will be May 15, 2006, and this will be for projects that the legislature would fund by April 1, 2007. Subsequent application/funding dates occur every 2 years.
- The Montana Department of Commerce offers Treasure State Endowment Program (TSEP) grants and loans, and Community Development Block Grant (CDBGs). The deadline for the next 2 years of TSEP and CDBG funding for capital projects has already passed. This application deadline also is based on the biennial legislative cycle. The next deadline for TSEP will be May 27, 2006 for CDBG, and first week of May 2006 for TSEP; these projects would be funded by April 1, 2007. Subsequent application/funding dates occur every 2 years.
- The TSEP also offers planning grants up to \$15,000, which are subject to the same deadline as applications for TSEP capital projects.

These agencies also have informed us that they require a Preliminary Engineering Report prior to approving a loan or grant for a capital project.

Please note that the enclosed Order names each of you individually as a party to the Order. Once the district is formed, we may, depending on what develops, amend it to substitute the district as the only respondent. If that amendment occurs, none of you would be individually named as a respondent.

The Order requires you to disconnect any abandoned homes from the system. This is because, in the absence of functioning back-flow prevention valves, these "dead ends" could cause accumulated bacteria to be back-washed into the system in the event of a loss of pressure.

The Order also requires you to disconnect any standpipes where users can load water into cisterns, or, alternatively, to preclude access to the standpipe by the general public.

We believe that this Order presents a reasonable approach to the System's problems with nitrate and total nitrate and nitrite.

As with any administrative order that EPA issues under SDWA § 1414(a), violating the enclosed Order may lead to (1) a penalty of up to \$32,500 per day of violation of the Order, (2) a separate such penalty for violating the regulations themselves, and/or (3) a court injunction ordering compliance.



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VIII**

2005 DEC -5 AM 8:41

FILED
EPA REGION VII
HEARING CLERK

IN THE MATTER OF)

Coffee Creek Water Company,)
Charlie Hartman, Lon Nemec,)
and Henry Nemec)

Coffee Creek, Montana)

Respondents)

Proceedings under Section 1414(g))
of the Safe Drinking Water Act,)
42 U.S.C. §300g-3(g))

Docket No. SDWA-08-2006-0006

ADMINISTRATIVE ORDER

This Administrative Order ("Order") is being issued by the United States Environmental Protection Agency Region VIII (EPA), pursuant to the authority vested in the Administrator of the EPA by Section 1414(g) of the Safe Drinking Water Act (the "Act"), 42 U.S.C. §300g-3(g). Authority to take this action has been properly delegated to the undersigned EPA officials.

FINDINGS

1. Respondent Coffee Creek Water Company (the "Company") is an unincorporated association of individuals known as "Trustees" and therefore a "person" as that term is defined in § 1401(12) of the Act, 42 U.S.C. § 300f(12), and 40 CFR §141.2.
2. As stated in a January 2, 1953 Agreement and Declaration of Trust of the Coffee Creek Water Company (the "Agreement"), the Trustees of the Company hold the title in trust to a water system (the "System") serving the citizens and residents of Coffee Creek, Montana.
3. According to page 1 of the Agreement, the Trustees of the Company manage, operate, and distribute water to the residents of Coffee Creek, Montana, or others in the vicinity.

4. According to page 2 of the Agreement, the Trustees of the Company "are to be designated in their collective capacity as the 'COFFEE CREEK WATER COMPANY.'"
5. According to page 2 of the Agreement, the Trustees of the Company "are authorized to engage in the operation" of the System.
6. Respondent Charlie Hartman is an individual and therefore a "person" as that term is defined in § 1401(12) of the Act, 42 U.S.C. § 300f(12), and 40 CFR § 141.2.
7. Respondent Charlie Hoffman is a Trustee of the Company.
8. Respondent Lon Nemec is an individual and therefore a "person" as that term is defined in § 1401(12) of the Act, 42 U.S.C. § 300f(12), and 40 CFR § 141.2.
9. Respondent Lon Nemec is a Trustee of the Company.
10. Respondent Henry Nemec is an individual and therefore a "person" as that term is defined in § 1401(12) of the Act, 42 U.S.C. § 300f(12), and 40 CFR § 141.2.
11. Henry Nemec is President and a Trustee of the Company.
12. Each Respondent owns and/or operates the System.
13. The System provides the public in and near Coffee Creek, Montana, with piped water for human consumption.
14. The System regularly serves an average of approximately 33 persons daily through approximately 24 service connections and is therefore a "public water system" as that term is defined in Section 1401(4) of the Act, 42 U.S.C. § 300f(4), and 40 CFR § 141.2 and a "community water system" as that term is defined in 40 CFR § 141.2.
15. Each Respondent is a "supplier of water" as that term is defined in Section 1401(5) of the Act, 42 U.S.C. § 300f(5), and 40 CFR § 141.2. The Respondents are therefore subject to the requirements of Part B of the Act, 42 U.S.C. § 300g *et seq.*, and its implementing

regulations, 40 CFR part 141, also known as the National Primary Drinking Water Regulations (NPDWRs).

16. The System is supplied solely by a ground water source consisting of a spring known as Johnson Springs.
17. The System is open all year.
18. The State of Montana has primary enforcement authority for public water supply systems in Montana. The Montana Department of Environmental Quality has requested EPA's assistance in addressing the violations cited below.

VIOLATIONS

19. According to 40 C.F.R. §141.62(b), the Maximum Contaminant Level ("MCL") for total nitrate and nitrite in water provided by public water systems is 10 milligrams per liter (mg/L).
20. According to 40 C.F.R. §141.62(b), the MCL for nitrate in water provided by public water systems is 10 mg/L.
21. The System has been reporting sample results in excess of the MCL for total nitrate and nitrite going as far back as May of 1973. Samples collected more recently from the System and reported to the Montana DEQ indicate that on the following dates the System's water contained the following concentrations of total nitrate and nitrite, each of was in excess of the applicable MCL:

March 1, 2000	17.6 mg/L
June 21, 2000	16.9 mg/L
March 8, 2001	17 mg/L
June 25, 2001	16.3 mg/L

Oct. 11, 2001	17.7 mg/L
Dec. 2, 2002	15.9 mg/L and 17.2 mg/L
March 19, 2003	14.9 mg/L
Jun 24, 2003	10.7 mg/L
Sep 24, 2003	14.8 mg/L
Dec 10, 2003	12.8 mg/L
Mar 25, 2004	12.3 mg/L
Jun 16, 2003	14.0 mg/L
Sep 1, 2004	11.8 mg/L
Dec 16, 2004	13.6 mg/L

22. Samples collected from the System and reported to the Montana DEQ indicate that on the following dates the System's water contained the following concentrations of nitrate, each of was in excess of the applicable MCL:

May 17, 1994	12 mg/L
September 13, 1999	17.7 mg/L
June 25, 2002	15.7 mg/L

23. EPA has determined that nitrate poses an acute health concern at certain levels of exposure. Excessive levels of nitrate in drinking water have caused serious illness and sometimes death in infants under six months of age.
24. EPA has concluded that the System does not reliably and consistently meet the MCL for nitrate or for total nitrate and nitrite.

ORDER

Based on the foregoing Findings and pursuant to the authority set forth in section 1414(g) of the Act, it is hereby ORDERED that the Respondents shall, seeking appropriate assistance from EPA and the Montana DEQ, implement a program to upgrade the System in order to achieve compliance with the nitrate and total nitrate and nitrite MCLs and all other NPDWRs.

The program shall include the following:

1. Within thirty (30) days after the effective date of this Order, the Respondents shall begin the process of creating a water district that will acquire and operate the System and be eligible for applying for funds from the State of Montana and/or the United States to upgrade the System. For purposes of this paragraph, to “begin the process” includes, at a minimum, notifying the following agencies of plans to form a district and requesting current information on their procedures for accepting applications for funding improvements to public water supply systems: the Montana DEQ (regarding its Drinking Water State Revolving Fund), the Montana Department of Natural Resources and Conservation (regarding its Renewable Resource grants and loans), the Montana Department of Commerce (regarding its Treasure State Endowment Program grants and loans and its Community Development Block Grants), the Montana Board of Investments (regarding its INTERCAP loan program), and/or the United States Department of Agriculture Rural Utilities Service (regarding its Rural Development grants and loans). Alternatively, the Respondents may satisfy this requirement by contacting any other organization or agency if they demonstrate to EPA and Montana DEQ in writing that such other organization or agency is capable of providing loans and

grants to assist public water supply systems. The Respondents also may form an entity other than a water district if they demonstrate to EPA and Montana DEQ that such other entity (a) is eligible to receive funding from some available source and (b) is the type of person authorized to own a public water supply system under Montana law, including MCA § 75-6-126(1), and if the EPA and Montana DEQ approve the formation of that entity.

2. Within six (6) months of the effective date of this Order, the Respondents shall have finished creating the new district or other entity referenced in the prior paragraph and will have transferred ownership and operational responsibility for the System to that district or other entity.
3. No later than May 15, 2006, the Respondents, on behalf of the district or other entity that they shall have created as described above, shall apply to the Montana Department of Natural Resources and Conservation and, if so requested in writing by EPA or the Montana DEQ at least 30 days before that deadline, to any other agency for a loan and/or grant to fund planning (including preparing a Preliminary Engineering Report or PER) for upgrades to the System in order to comply with the NPDWRs, including but not limited to the MCLs for nitrate and for total nitrate and nitrite. The Respondents shall provide EPA with a copy of their completed loan and/or grant application.
5. By December 30, 2006, the Respondents shall, on behalf of the district, submit a PER to EPA and the Montana DEQ for review. The PER shall describe and compare the costs, benefits, and feasibility of reasonable alternatives for

upgrading the System to bring it into compliance with all NPDWRs. Among the alternatives that the PER may consider are installing central treatment, installing a well or other equipment to obtain water from an alternative source, and purchasing water from another community or other source.

6. By March 1, 2007, the Respondents shall apply to the Montana DEQ, the Montana Board of Investments, and/or the United States Department of Agriculture Rural Utilities Service (and, if EPA or the Montana DEQ requests in writing by February 1, 2007, to any other agency or agencies) for funding to enable the Respondents to complete all measures, consistent with the PER, for bringing the System into compliance with the NPDWRs. If the Respondents make timely applications to all three of the agencies named in the preceding sentence (and to any other agency or agencies to which EPA or the Montana DEQ may request as allowed above) but nonetheless are unable to secure adequate funding, then the Respondents shall, no later than May 1, 2008, apply to the Montana Department of Natural Resources and Conservation and the Montana Department of Commerce for funding.
7. Before starting construction on any improvements to the System, Respondents shall obtain approval of the Montana DEQ of the plans and specifications for those improvements.
8. If the Respondents purchase water from another source, or if Respondents mix water from the System with water purchased from another public water system, they shall, within ninety (90) days of signing this Order, notify EPA and the

Montana DEQ of the source that they have selected. If EPA and the Montana DEQ approve the alternative source in writing, and if the Respondents demonstrate their ability to secure this alternative source without forming a district, then the Respondents shall no longer be obligated to comply with paragraphs 1-7, above, of this Order. EPA may require that this alternative source be tested before approving it.

9. By December 30, 2007 (or, if allowed by EPA in writing, a later deadline, should applications submitted by March 1, 2007 fail to secure adequate funding), the Respondents shall have completed all measures necessary for the System to achieve and maintain compliance with the nitrate and total nitrate and nitrite MCLs (40 CFR § 141.62(b)).
10. At all times after December 30, 2007 (or, if allowed by EPA in writing, a later deadline), the Respondents shall comply with the nitrate and total nitrate and nitrite MCLs (40 CFR § 141.62(b)).
11. No later than ninety (90) days after the effective date of this Order, the Respondents shall disconnect any abandoned homes from the System. If any home is abandoned after the effective date of this Order, the Respondents shall disconnect that home within six (6) months of determining that the home has been abandoned. Within thirty (30) days of disconnecting any abandoned home or any other connection from the System, the Respondents shall notify EPA in writing of the disconnection. To "disconnect" for purposes of this paragraph and the following paragraph means to sever, cap, and rebury some part of the water line

between the water main and the home, or to meet any other criteria for disconnecting of the abandoned homes that EPA approves in writing.

12. No later than ninety (90) days after the effective date of this Order, the Respondents shall either (1) disconnect any outside standpipes from which it is possible to load cisterns or (2) install measures to allow access to the standpipes only by individuals who have been notified in writing of the nitrate hazard. Within thirty (30) days of making any such disconnections or installing such measures, the Respondents shall notify EPA.
13. Until otherwise notified by EPA in writing, the Respondents shall continue providing bottled water to all households in the System with pregnant women and/or children under the age of six months, in sufficient quantity for drinking and cooking. The bottled water will be from a reputable firm in the business of supplying bottled water to the public.
14. The Respondents shall continue providing public notice of all violations of the nitrate and total nitrate and nitrite MCLs in accordance with 40 CFR part 141, subpart Q. In addition, the Respondents shall give written notification, before the date of hookup, to each new resident hooking up to the System that infants below the age of six months who drink water containing nitrate or total nitrate and nitrite in excess of 10 mg/l could become seriously ill and, if untreated, may die, and that symptoms of drinking water exceeding this level of nitrate or total nitrate and nitrite include shortness of breath and blue baby syndrome.
15. The Respondents shall report to EPA any changes in the population and/or

number of connections served by the System, no later than ten days after the end of the month in which the population or number of connections changes.

OTHER REQUIREMENTS

16. Items reported to EPA and the Montana DEQ under this Order are to be sent to:

Eric Finke
U. S. EPA Region VIII (8MOO)
Federal Office Building, Suite 3200
10 West 15th Street
Helena, MT 59626

and

Franklin H. Gessaman, Chief
Case Management Bureau
Montana Department of Environmental Quality
P.O. Box 200901
Helena, MT 59260-0901

17. This Order does not relieve the Respondents of any responsibilities or liabilities established pursuant to any applicable federal, state or local law.
18. Issuance of this Order is not an election by EPA to forgo any civil or criminal action otherwise authorized under the Act.
19. Violation of any term of this Order may subject Respondents to an administrative civil penalty of up to \$27,500 under Section 1414(g)(3)(B) of the Act, 42 U.S.C. § 300g-3(g)(3)(B), or a civil penalty of not more than \$32,500 per day of violation, assessed by the U.S. District Court, under Section 1414(g)(3)(A) of the Act, 42 U.S.C. § 300g-3(g)(3)(A).
20. Violation of any requirement of the Act or its implementing regulations not otherwise covered under this Order may subject Respondents to a civil penalty of

not more than \$32,500 per day of violation, assessed by an appropriate U. S.

District Court, under Section 1414(b) of the Act, 42 U.S.C. § 300g-3(b).

21. This Order shall become effective upon the date of the latest signature below.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8,

Complainant.

Date: 12/1/05

By: Michael T. Risner

Michael T. Risner, Director

David J. Janik, Supervisory Attorney

Legal Enforcement Program

Date: 11/23/05

By: John Wardell

John Wardell, Director

Montana Office

